IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

MACA.No. 344 of 2003

OPMV.297/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
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APPELLANT/CLAIMANT

SIVAN ACHARI, AGED 54 YEARS, S/O.
RAJAPPAN ACHARI, THEKKEKANDOM HOUSE,
THEKKEKANDOM KARA, THURAVOOR VILLAGE, CHERTHALA
RESIDING AT E.P.8/B KSEB QUARTERS,
EDAMALAYAR P.O., KOTHAMANGALAM.

BY ADV. SRI.JOHN JOSEPH(ROY)
SRI.JIJO ISAAC

RESPONDENTS: RESPONDENTS
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1. C.J.JAMES, AGED 33 YEARS,
S/O.C.V.JOSEPH, CHERUVANNOORE HOUSE,
VELLATHOOVAL, DEVIKULAM TALUK, WORKING AS DRIVER
K.S.E.B, GENERATION CIRCLE, CHITHIRAPURAM,
MEENKUTHU, MUNNAR.

2. I.V.ANANDAN, JANIKI NIVAS, NEDUMPAL,
PUDUKKADU P.O., THOTTIPAL, TRICHUR DISTRICT.

3. THE ORIENTAL INSURANCE COMPANY LIMITED,
CHALAKUDY BRANCH, CHALAKUDY.

BY ADV. SRI.P.V.BABY
SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 9/2/2007, THE COURT, ON 14/02/2007, PASSED THE FOLLOWING:

P.R. Raman & S. Siri Jagan, JJ.

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M.A.C.A No. 344 of 2003

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Dated this, the 14th February, 2007.

J U D G M E N T

Siri Jagan, J.

A pillion rider of a motor cycle, which was involved in an accident as a result of skidding and overturning causing injuries to the petitioner, is the appellant herein, who is aggrieved by the award of the MACT, Thodupuzha in O.P(MV) No. 297/1998 in which the Tribunal has entered a finding that no compensation is payable to the appellant for the injuries sustained by him, since no negligence can be attributable to the driver of the motor cycle.

2. The accident occurred on 10-8-1997 while the appellant was riding as a pillion rider of a motor cycle bearing reg. no. KBR 3631, which was being driven by the 1st respondent herein. The motor cycle was owned by the 2nd respondent and insured with the 3rd respondent. The learned Tribunal found that the contention of the appellant that there was rashness and negligence on the part of the 1st respondent is not correct and therefore found that no compensation is due to the appellant on account of the injuries sustained by him in the accident.

3. The appellant submits that the finding is against the evidence in the case. He would submit that he himself had given evidence before the Tribunal to the effect that the skidding and overturning of the vehicle were on account of the rash and negligent driving of the motor cycle by the 1st respondent, who was driving the motor cycle.

4. We have heard the learned counsel for the appellant as well as the learned counsel for the 3rd respondent-Insurance Company.

5. In respect of the accident, police had registered a case. The case diary of the police was produced as Ext. X1 before the Tribunal. The same was marked on mutual consent of the parties in the case. While being examined as PW1 before the Tribunal, the appellant

himself specifically admitted that the police had questioned him about the accident and that he had given a statement to the police. The Tribunal found that Ext. X1 case diary contains his statement in which the appellant stated that there was no negligence on the part of the 1st respondent. On the basis of this statement, coupled with the fact that the police in their final report in Crime No. 90/1997 of Kuttampuzha police station referred the matter as a mistake of fact, the Tribunal came to the conclusion that the allegation of the appellant that the accident occurred on account of the negligence of the 1st respondent is false and that the allegation was raised before the Tribunal only to sustain his claim for compensation from the Insurance Company. The Tribunal also noted the fact that as evident from Ext. A5 copy of the wound certificate issued by the doctor who examined him after the accident at the time of accident, the appellant was drunk. Of course, counsel for the appellant would submit that smelling of alcohol, which was what was stated in Ext. A5, would not amount to being drunk or being under the influence of alcohol. He would further submit that whatever that be, the fact that the appellant had consumed alcohol would not absolve the driver of the vehicle from liability.

6. However, we are not inclined to agree with the learned counsel for the appellant at least on the ground of negligence of the 1st respondent. The appellant had taken contradictory stand before the police and before the Tribunal. Before the police, apparently, in order to save the driver of the motor cycle from prosecution, he had taken a stand that there was no negligence on the part of the 1st respondent. In such circumstances, when he took a directly contradictory stand before the Tribunal that the accident occurred on account of the rashness and negligence of the 1st respondent, the Tribunal could not be found fault with when it entered a finding that

the appellant raised that allegation only to enable him to claim compensation from the Insurance Company. Of course, at the relevant time, the law as it stood then was that even for a pillion rider, insurance company is liable to indemnify the insured. But the law has changed now finally by the decision of the Supreme Court of India which has been followed by a Full Bench of this Court in M.F.A.No. 502/1999. The appellant also does not dispute that in respect of the pillion rider, no longer the Insurance Company is liable to indemnify the insurer.

7. Learned counsel for the appellant made a fervent plea that since the Tribunal had already come to the conclusion that in the accident he had suffered injuries and also computed the compensation which he would not have been entitled from the respondents if they were liable, it is only just that the appellant be granted that compensation. We are unable to agree with that contention of the appellant also. Unless we can find negligence on the part of the driver of the motor cycle, there is no way under law that the appellant could have been given compensation even if he has suffered injuries in the accident.

For all the above reasons, we do not find an merit in the contentions of the appellant in this appeal and accordingly, the appeal is dismissed.

Sd/- P.R. Raman, Judge.

Sd/- S. Siri Jagan, Judge.

Tds/

[True copy]

P.S to Judge.

P.R. Raman & S. Siri Jagan, JJ.

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M.A.C.A No. 344 of 2003

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J U D G M E N T

February, 2007.